IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 836 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOPALBHAI CHATURBHAI AMIN

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 836 of 2004

MR DM AHUJA for Petitioner No. 1

MR TS NANAVATI SP.PUBLIC PROSECUTOR for State

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 06/12/2004

ORAL JUDGEMENT

Rule. Mr.TS Nanavati, learned Special Public Prosecutor waives service of notice of rule on behalf of respondent State.

2. The present Criminal Revision Application has been preferred against the order passed by the Additional Sessions and Fast Track Judge, Ahmedabad (Rural) in Criminal Revision Application No.105 of 2004, whereby the remand of the present applicant was given for 2 days from 4/12/2004 12.30 p.m. to 6/12/2004 12.30 p.m.

3. The present applicant was arrested on 31/10/2004 in connection with the offence bearing CR No.I-202 of 2004 registered at the Sarkhej Police Station dtd.21/9/2004 for the offences punishable under sections 406, 420 and 114 of Indian Penal Code. The remand application was preferred by the State on 1/11/2004 before the Judicial Magistrate (FC), Ahmedabad (Rural). The said application was rejected by the Judicial Magistrate (FC), vide order dtd.1/11/2004. Immediately on 5/11/2004, a Revision application was preferred by the State before the Additional Sessions and Fast Track Judge, Ahmedabad (Rural) against the rejection of remand by the Judicial Magistrate (FC). Upon hearing the parties, the learned Additional Sessions and Fast Track Judge, Ahmedabad (Rural) granted remand of the present applicant for 2 days from 4/12/2004 to 6/12/2004, vide order dtd.3/12/2004 in Criminal Revision Application No.105 of 2004.

4. Mr.D.M. Ahuja, learned counsel appearing for the applicant submitted that the order passed by the learned Additional Sessions and Fast Track Judge, Ahmedabad (Rural) dtd.3/12/2004 in Criminal Revision Application No.105 of 2004 is dehors the facts and law and therefore, the same deserves to be quashed and set aside. It is also submitted by the learned counsel appearing for the applicant that the order granting remand of the present applicant is revisable under the revisional jurisdiction conferred upon this Court, under sec.397 to be read with Sec.401, of the Code of Criminal Procedure, 1973. It is also submitted by the learned counsel for the applicant that the remand cannot be granted after first 15 days from the date of the arrest of the applicant. In the present case, the present applicant is arrested on 31/10/2004 and the remand has been granted by the Addl.Sessions Judge, Ahmedabad (Rural) on and from 4/12/2004 to 6/12/2004 and therefore, the order passed by the Addl.Sessions Judge deserves to be quashed and set aside. Learned counsel for the applicant has relied upon the judgement delivered by the Apex Court in Central Bureau of Investigation, Special Investigation Cell-I Vs. Anupam J. Kulkarni, reported in AIR 1992 SC 1768. It is also submitted by the learned counsel appearing for the

applicant that the reasons given in the remand application does not warrant the grant of the remand of the present applicant, especially in view of a judgement of this Court reported in 2002 (1) GLR 215 and therefore, the order passed by the Addl.Sessions Judge (Ahmedabad) Rural, deserves to be quashed and set aside.

5. Mr.TS Nanavati, learned Special Public Prosecutor appearing for the respondent State submitted that the order passed by the Addl.Sessions and Fast Track Judge, Ahmedabad (Rural), granting remand for 2 days is not revisable as per the judgement delivered by the Hon'ble Supreme Court in State and Ors. Vs. NMT Joy Immaculate, reported in (2004) 5 SCC 729. It is also submitted by the learned Special Public Prosecutor appearing for the State that in the present case, immediately after the arrest of the present applicant, a remand application was preferred on 1/11/2004, but the same was not granted by the Judicial Magistrate, First Class and therefore, within a period of 15 days from the date of the production of the applicant before the Judicial Magistrate, First Class, again a Revision Application was preferred before the Additional Sessions Judge, Ahmedabad (Rural) i.e. on 5/11/2004. Thus, there is no lacuna or lethargic approach on the part of the State; there is no breach of any of the provisions much less an interpretation of Sec.167 as made out by the Hon'ble Supreme Court in case reported in AIR 1992 SC 1768; the application for remand was preferred within 15 days; even the Revision Application against the rejection of the remand was also preferred within 15 days from the date of the arrest, but the judgement was delivered on 3/12/2004 by the Addl.Sessions and Fast Track Judge, Ahmedabad (Rural) granting remand for two days from 4/12/2004 to 6/12/2004. In fact, the judgement was delivered on 3/12/2004 shall have an effect, as if it is allowed on the date on which the application was preferred before the Sessions Court, Ahmedabad (Rural). Always judgement relates back, and therefore, the remand granted by the Addl.Sessions Judge keeping in mind the facts and reasons stated before the said Court is true and correct and requires no interference by this Court in exercise of the revisional jurisdiction under sec.397 to be read with sec.401, of the Code of Criminal Procedure. It is also submitted by the learned counsel appearing for the applicant that the present applicant is involved in selling away Government lands in several cases; there are 10 cases registered against the present applicant; all are pertaining to the selling away of the Government land. Even in the present case, i.e. the offence registered at Sarkhej Police Station bearing CR No.I-202

of 2004 is for selling away of the Government land bearing Revenue Survey Nos.1020/1 and 1221. The learned Special Public Prosecutor has also shown to this Court revenue record, which reveals prima facie the fact that as per the records maintained under the provisions of the Bombay Land Revenue Code (popularly known as 7/12 extract), the aforesaid two lands are of the Government land. It is also pointed out by the learned Special Public Prosecutor appearing for the State that the present applicant has entered into several agreements to sale and the deeds in nature of partnership, all pertaining to the Government land, certain documents are notarized, but undated, and certain documents notarized without any identification by the advocate etc. He has also brought to the notice of this court certain statements including statement of Kanubhai Kacharabhai, who is Talati-cum-Mantri as well as statement of the applicant himself. As a cumulative effect of the investigation carried out so far, couple with the documents gathered by the prosecution during the course of investigation so far carried out, and for the reasons stated in the application for grant of remand, which is at Annexure-D to the compilation of the present revision application, are so justified that the remand of the present applicant ought to have been granted, in fact, initially by the Judicial Magistrate (FC), but the Judicial Magistrate (FC), has rejected the remand application and therefore, upon evaluating the facts of the present case and the investigation carried out, so far, by the prosecution, and looking to the involvement of the present applicant and keeping in mind the statement of the witnesses and documents gathered by the prosecution, the order of remand for 2 days of the applicant, passed by the Addl.Sessions and Fast Track Judge, Ahmedabad (Rural), in exercise of its revisional jurisdiction is just, proper, legal and in consonance with the facts and law and therefore, the said order may, not, be interfered with, in further exercise of the revisional jurisdiction of this Court, especially in exercise of revisional jurisdiction of this Court, especially when it is held by the Apex Court in para 13 in the judgement reported in (2004) 5 SCC 729 that grant of remand has no bearing upon the proceedings of the trial, nor can it have any effect on the ultimate decision of the case. It is also submitted by the learned Special Public Prosecutor that the highest court of the country has gone a step further and has held that even if the order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of the proceedings. A remand order cannot affect progress of the trial or its decision in any

manner and therefore, applying the test laid down in Madhu Limaye case, reported in (1977) 4 SCC 551, the order of grant of remand cannot be categorized, even, as an "intermediate order" and therefore, the impugned order passed by the Addl.Sessions and Fast Track Judge, Ahmedabad (Rural) is at the most can be labelled as pure and simple interlocutory order, and therefore, the present revision application is not tenable at law and therefore, the present revision application may not be entertained in exercise of the revisional jurisdiction.

6. I have heard the learned counsel for both the sides and perused the statements, revenue record of Revenue Survey Nos.1020/1 and 1221, notarized documents, documents in nature of partnership or Memorandum of Understanding and the statements of the present applicant etc. Looking to the facts and circumstances of the case, gravity of the offence, nature of the offence, documents collected by the prosecution so far during he course of investigation with regard to CR No.I-202 of 2004 at Sarkhej Police Station, involvement of the present applicant and the reasons for remand carved out in the application preferred by the prosecution, the impugned order passed by the Addl.Sessions and Fast Track Judge, Ahmedabad (Rural) is just, legal and in consonance with the facts and law and requires no interference by this Court, especially in exercise of the revisional jurisdiction conferred upon this Court under sec.397 to be read with sec.401 of the Code of Criminal Procedure, especially for the following facts and reasons;-

[I] There are 10 cases registered against the present applicant (four in Gandhinagar, 4 in the City of the Ahmedabad and two in Sarkhej Police Station); involvement of the present applicant in selling away huge wast and wide Government land by entering into various documents including that of agreement to sale, deed in nature of partnership or Memorandum of Understanding etc. Totally the sale of the Government land worth hundred of crores of rupees. In the present case, i.e. in CR No.I-202 of 2004 registered at Sarkhej Police Station. The present applicant prima facie, is involved in selling away the lands which belong to the Government. As per the Special Public Prosecutor, there are as many as 308 properties are under close scrutiny, wherein the present applicant is involved in sell of the Government land. Thus, a big scam of the sale of the Government land is under investigation and the present offence being CR No.I-202 of 2004 registered at Sarkhej Police Station, is one of the such offences, registered against the present applicant.

[II] Looking to the documents, statements like statement of Kanubhai Kacharabhai, who is Talati-cum-Mantri as well as statement of the present applicant etc., the order passed by the Additional Sessions Judge is just and proper whereby remand of 2 days of the present applicant has been granted.

[III] It is contended by the learned counsel appearing for the applicant that as per the decision delivered by the Apex Court in Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J.Kulkarni, reported in AIR 1992 SC 1768, after 15 days period from the date of the production of the accused is over, the police custody of the said accused cannot be given. In the present case, the date of production of the present applicant is 1/11/2004 and the remand was sought w.e.f.1/11/2004 the revision application was preferred on 5/11/2004 and therefore, the impugned order passed by the Addl.Sessions Judge runs contrary to the interpretation of Sec.167 made by the Hon'ble Supreme Court. The aforesaid contention raised on behalf of the applicant though looks attractive, is not tenable at law for the simple reason that in the present case immediately upon the production of the present applicant i.e. on 1/11/2004, application for remand was made by the State and upon rejection of the same by the Judicial Magistrate (FC), Ahmedabad (Rural), immediately on 5/11/2004 a Revision Application was preferred by the State before the Sessions Court at Ahmedabad (Rural). Thus both, the remand application as well as the revision application were preferred by the State within a period of 15 days from the date of production of the present applicant and the learned Addl.Sessions Judge passed order on 3/12/2004 and therefore, the judgement cited by the learned counsel appearing for the applicant is of no help to the applicant. In the case cited by the learned counsel for the applicant, last remand application was preferred after 15 days was over from the date of production of the accused of that case, and therefore the decision upon which the learned counsel for the applicant is harmping,is of different facts than the facts of the case on hand. In the aforesaid cited decision of the Apex Court, initially remand was granted, second remand application was preferred for extension of remand and same was also granted, as the said petitioner - accused was hospitalized, the police has not taken the custody of the said accused and after a period of 15 days from the date of the production of the accused, third application for remand was preferred by the State after 15 days. In that set of facts, the aforesaid judgement was delivered

by the Apex Court. So far as the facts of the present case are concerned, immediately on the date of production of the applicant, a remand application was preferred by the State and that was the first remand application, which was not granted by the Judicial Magistrate, First Class, against which, immediately a revision application was preferred on 5/11/2004 and thus the prosecution has taken all the steps within 15 days from the date of the production of the applicant. The Addl.Sessions Judge passed order on 3/12/2004 granting remand of the present applicant for a period of 2 days and therefore, the order passed by the Addl.Sessions Judge granting remand of the applicant is not contrary to the ratio laid down by the Apex Court in the case reported in AIR 1992 SC 1768.

[IV] It also contended by the learned counsel for the applicant that the Revision Application preferred by the State before the Addl.Sessions Judge against the rejection of the remand application of the present applicant by the Judicial Magistrate, First Class, Ahmedabad (Rural) was not tenable at law and therefore also, the impugned order passed by the Addl.Sessions Judge deserves to be quashed and set aside.

The aforesaid contention raised by the learned counsel for the applicant is not acceptable for the simple reason that law laid down by the Supreme Court in State & Anr. Vs. NMT Joy Immaculate, reported in (2004) 5 SCC 729, especially para 13 thereof reads as under;-

"13. Section 167 CrPC empowers a Judicial Magistrate to authorise the detention to an accused in the custody of police. Sec.209 CrPC confers power upon a Magistrate to remand an accused to custody until the case has been committed to the Court of Session and also until the conclusion of the trial. Section 309 CrPC confers power upon a court to remand an accused to custody after taking cognisance of an offence or during commencement of trial when it finds it necessary to adjourn the enquiry or trial. The order of remand has no bearing on the proceedings of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision any manner. therefore, applying the test laid down in Madhu Limaye Case it cannot be categorized even as an "intermediate order". The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub-section (2)

of Section 397 CrPC, a revision against the said order is not maintainable. The High court, therefore, erred in entering the revision against the order dated 6/11/2001 of the Metropolitan Magistrate granting police custody of the accused Joy Immaculate for one day."

From the aforesaid paragraph it is clear that there is vast difference between the grant of remand and rejection of the remand. The whole decision of the Hon'ble Supreme Court reported in (2004) 5 SCC 729, was for grant of remand, which is held as an interlocutory order and not revisable. If the remand is rejected and the remand of the accused is not given to the police, it adversely affects the right of the prosecution of carrying out investigation. Right to carry out investigation and by which method, is exclusive powers of the State. Custodial interrogation, is one of the well-known methods of investigation and therefore, when the remand is not granted, it affects vitally and adversely, the investigation but if the same is granted, then as per para 13 of the aforesaid judgement, even if the remand is granted, illegally, it does not affect finality of the case and therefore, grant of remand is interlocutory order, but converse is not true and therefore, revision application preferred by the prosecution against the order passed by the Judicial Magistrate, First Class, before the Sessions Court at Ahmedabad (Rural), was tenable at law under sec.397 of the Code of Criminal Procedure.

[V] The present application preferred by the applicant is under sec.397 to be read with Sec.401 of the Code of Criminal Procedure, is not tenable at law against the order of grant of remand of the present applicant for 2 days, as held by the Hon'ble Apex Court in State & Anr. Vs. NMT Immaculate (Supra), especially in paragraph Nos. 12 and 13 that the order of remand at the best can be labelled as an interlocutory order and therefore, the same is not revisable.

Even otherwise also, looking to the facts and circumstances of the case, the investigation carried out so far by the prosecution, the involvement of the present applicant which is prima facie revealed by the statements of witnesses and the documents collected so far by the prosecution and keeping in mind the reasons for getting police custody of the present applicant, the impugned order passed by the learned Addl.Sessions and Fast Track Judge, Ahmedabad (Rural) granting remand of the applicant for two days from 4/12/2004 to 6/12/2004, is just, legal, proper and in consonance with the facts and law. The

learned counsel appearing for the applicant submits that a stay has been granted by the Addl.Sessions Judge staying the impugned order.

In view of the above, there is no substance in the present Criminal Revision Application and hence the same is dismissed. Rule is discharged. The stay granted by the Addl.Sessions and Fast Track Judge, Ahmedabad (Rural), staying the impugned order is hereby vacated. Rule is discharged.

The prosecution shall take the custody of the present applicant - original accused w.e.f. 7/12/2004 3.00 p.m. to 9/12/2004 3.00 p.m.

Learned counsel appearing for the applicant prays for stay of the aforesaid order. Looking to the facts and circumstances of the case, gravity of the offence and prima facie involvement of the present applicant, and keeping in mind the ratio of the judgement delivered by the Hon'ble Supreme Court in (2004) 5 SCC 729, the request made by the learned counsel for the applicant is not accepted.

(D.N. PATEL,J.)